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**NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE
(SERVICES AND INVESTMENT)**

SUBJECT: *TiSA negotiations*

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OBJECTIVE: *For information*

REMARKS:

Please find attached the following documents:

Report of the 20th TiSA round (published online)

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European
Commission

Report of the 20th TiSA negotiation round 9 – 25 September 2016

Summary

The 20th TiSA negotiating round took place from 19 – 25 September 2016 and was organised and chaired by the US.

The round focused on advancing discussions on texts, in small groups, bilateral and plenary settings.

*Parties discussed the **key annexes** on:*

- *Telecommunications*
- *E-commerce*
- *Localisation*
- *Financial Services*
- *Transparency*
- *Mode 4.*

***Other annexes** on transport (Maritime, Air, Road) as well as professional services, state-owned enterprises and delivery services were also discussed.*

*Further discussions took place on **institutional arrangements**, including dispute settlement. The EU submitted two formal proposals as a basis for discussion.*

*Overall, it was a round with **good progress in working towards agreed text**. A process to elevate outstanding issues to higher political levels has been initiated at this round, with an initial exchange of views on some issues among Chief Negotiators.*

*An **updated ambitious work plan** towards a possible conclusion by the end of the year has been agreed. As immediate next steps, a Chief Negotiators' meeting will take place on 17/18 October in Washington, followed by a full negotiation round from 2-10 November 2016.*

Detailed report

1. Horizontal discussions

Horizontal discussions took place on market access and the core text.

On **market access**, all pending offers from the Parties are now on the table. The EU proposed to turn the so-called "commitment related provisions", which set out market access standards in several annexes, into aspirational objectives for current and future TiSA participants. This proposal will require further discussion in the course of the negotiations.

On the **core text**, discussions addressed:

- transparency; the relevant provisions have been moved to the dedicated Annex on Transparency,
- subsidies and denial of benefits, where Parties discussed whether and/or in which form such provisions were needed in TiSA,
- provisions on Most-Favoured Nation and Economic Integration, where Parties discussed to what extent the most-favoured nation principle should apply to TiSA.

While some Parties favour the GATS-approach of carving out economic integration agreements from the MFN discipline, others prefer to apply a forward-looking MFN without such a carve-out.

2. Institutional provisions

Discussions took place on the basis of a proposal from the EU, which covers all **administrative issues** that would be necessary for the functioning of the agreement (inter-governmental committee - including chair and observers; modification of schedules; entry into force; multilateralisation; accession; amendments). Parties exchanged views on each of the provisions and converged on the need to include articles on those topics. Technical work will continue in the coming weeks.

The EU also presented its proposal for a **State-to-State Dispute Settlement chapter** in TiSA. The proposal aims at establishing an effective and efficient mechanism for resolving any disputes between the Parties on the interpretation and application of TiSA. The text is largely based on the WTO Dispute Settlement Understanding and does not jeopardise the future multilateralisation of the Agreement.

The proposal contains three sections and 37 provisions. The first section contains "general provisions", the second section focuses on the adjudication procedure while the last section contains a detailed "mediation" procedure that should not pre-empt or prejudice adjudication. The Rules of Procedure and Code of Conduct for Arbitrators and Mediators are to be proposed at a later stage, so as to align their content to the discussion on the main Chapter. The round allowed for a first detailed discussion on the text of the EU proposal.

The round also allowed for identification of issues where more focused groundwork is needed, which will be discussed in between the latest and the upcoming round.

3. Transparency

Following a half-day plenary discussion, the text of the annex on transparency is now almost entirely stabilised. There is broad agreement as regards a compromise wording of the article on stakeholder consultation and prior publication of laws and regulations, with only a few Parties that need further internal consultations. An agreement regarding the "reasonable time" between publication and entry into force has also been reached. Remaining parts of the text have also been cleaned up.

4. Financial Services

During three days of discussions on financial services, Parties made further progress in consolidating the text, but some difficult questions could still not be resolved. There was progress on a transparency provision, where almost all Parties are supporting now the approach to include relevant provisions from the horizontal Annex on Domestic Regulation, but still differ as to the extent of such inclusion. The EU is in favour of an ambitious approach in this respect.

Parties moreover agreed on the entire text of the prudential measures and made further progress on an article on financial services new to the territory of a Party. The recent proposal on the location of data and computing facilities was further explained and discussed. Further work will be needed on financial services purchased by public entities, as well as articles on insurance services provided by postal entities and cooperatives respectively.

5. Telecommunication Services

The discussions on the Annex on Telecommunication Services took place in a small group format, which addressed a series of specific issues. Parties stabilised a provision relating to licensing, ensuring transparent and efficient authorisation process for the provision of telecommunication services. With respect to an article on the resolution of disputes, Parties started to streamline the text, in order to ensure consistency with the general provisions of the Agreement.

On number portability, Parties are converging towards a language ensuring portability, while providing for flexibility to Parties that have not yet a portability regime in place. Further discussions took place on a provision on the interconnection for all suppliers as well as on an article relating to anti-competitive practices.

Parties agreed to hold discussions in between the two rounds to further advance on the Telecommunications Annex.

6. E-commerce

The small group discussions on the Annex on Electronic commerce allowed for an exchange of views on the provisions relating to open networks, unsolicited commercial communication (spam), interactive computing and international cooperation. Parties discussed how to best craft a provision for future cooperation in the field of e-commerce and will reflect on various options (such as exchange of information; joint actions in international fora). On spam, convergence has increased with respect to ensuring that opt-in/opt-out mechanisms exist for unsolicited emails; and also for the minimisation of other unsolicited communications.

Parties agreed to hold discussions in between the two rounds.

7. Localisation

The text of the Annex on Localisation was discussed in its entirety. Disciplines on local presence which apply to cross-border services have now been fully agreed. Agreement has also been reached with respect to rule which prohibits nationality and residency requirements regarding senior management, while discussions with respect to boards of directors are still ongoing. Provisions on performance requirements also largely remain under discussion.

Agreement has also not yet been reached whether or not financial services should be excluded from the scope of the Localisation Annex.

8. Mode 4 (movement of natural persons)

The Mode 4 negotiations focused on a few outstanding issues relating to procedures regarding the entry of natural persons (service suppliers or persons who work for service suppliers). Parties discussed particularly the scope, especially as regards the question whether procedure-related provisions should apply only to the categories of natural persons covered by a Party's schedule of commitments or all service suppliers in general. Parties also discussed a provision on multiple entry visas, which for the EU are not a matter of trade agreements.

9. Transport

Discussions on transport were held in the form of "small groups".

As for **maritime transport**, the discussion focussed on provisions relating to scope and definitions, cargo sharing agreements, and the movement of empty containers, in order to discuss a number of issues where participants sought clarification. Discussions also addressed provisions that are largely agreed, notably obligations relating to access to port services, as well as port fees and charges.

With respect to **air transport**, small group work took place to prepare a compromise solution to the outstanding Articles relating to the list of services which would be covered by TiSA and their definition.

Discussions on the Annex on **road transport** also continued in respect of various articles of that text.

10. Other topics

Constructive discussions in small group format took place on other Annexes and text proposals, such as **state-owned-enterprises**. The EU took a position in line with the prevailing policy adopted in bilateral trade negotiations. The EU emphasised that the rules must allow the delivery of legitimate public services in a way that public authorities judge it appropriate. A discussion on an Annex on **professional services** addressed rules on the scope, business names, and legal services. Parties also discussed an **Annex on Delivery Services**. Further work on these Annexes will be required.